IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

Crl.MC.No. 1828 of 2007()

CRMP.2039/2007 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR

.....

PETITIONER: THIRD PARTY

SOJI VARGHESE, S/O. VARGHESE,
THEKKANATH VEEDU, THOTTUVA KARA,
KODANADU VILLAGE, CHERANELLOOR P.O.

BY ADV. SRI.C.S.MANU
SRI.ANOOP.V.NAIR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE,
KODANAD POLICE STATION.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.No. 1828 of 2007

- -

Dated this the 11th day of June, 2007

O R D E R

The petitioner's vehicle was allegedly involved in illicit transportation of river sand. It was seized. The petitioner applied before the learned Magistrate for release of the vehicle. That prayer was rejected and the application was dismissed by Annex.A2 order. The petitioner laments that the rejection of his application is unjustified. Subject to appropriate terms, the vehicle may be ordered to be released. The counsel relies on the decision in **Sunderbhai Ambalal Desai** v. **State of Gujarat** (AIR 2003 SC 638), and submits that courts must show anxiety to avoid the consequence of the vehicles being exposed to sun and rain and subjected to deterioration and loss.

2. The learned Prosecutor, after taking instructions, submits that the State has no objection if the vehicle is released subject to appropriate safeguards and necessary conditions. I am satisfied that without entering on any factual controversy, there can be a direction to release the vehicle to the petitioner.

4. This Crl.M.C. is accordingly allowed. Annex.A2 order is set aside. The vehicle in question shall be released to the petitioner on the following terms and conditions.

(1) He shall produce all documents to satisfy the learned Magistrate that he is the owner entitled for possession of the vehicle.

(2) He shall execute a bond for an amount equal to the value of the vehicle (as ascertained and determined by the learned Magistrate in his discretion) with two solvent sureties each for the like sum. He shall also deposit an amount of Rs.25,000/- in cash before the learned Magistrate.

(3) The petitioner shall in the bond to be executed by him, specifically undertake to produce the vehicle before the learned Magistrate or before any other officer as and when so directed.

(R. BASANT)
Judge

tm